



1 advised to grant the outright release of inmate[s] who are not United  
2 States citizens, this violated my state and federal rights to due  
3 process under the Fourth and (14) Amendment to the United States  
4 Constitution, and laws." [Petition at 5].

5 3. "Facts, on May/2/2013 this petitioner due process was  
6 violated when the (BPH) refused to advance my hearing after a review  
7 on the merits...." [Petition at 6].

8 For the following reasons, the petition is dismissed without  
9 prejudice and with leave to amend.

10 A habeas corpus petition is the exclusive mechanism for a state  
11 prisoner to challenge the fact or duration of his or her confinement,  
12 "either directly through an injunction compelling speedier release or  
13 indirectly through a judicial determination that necessarily implies  
14 the unlawfulness of the State's Custody." Wilkinson v. Dotson, 544  
15 U.S. 74, 81 (2005)(emphasis in original); see Preiser v. Rodriguez,  
16 411 U.S. 475, 498-499 (1973) (explaining that habeas corpus  
17 proceedings are the proper and exclusive mechanism for a prisoner to  
18 challenge the fact or duration of his confinement); Ramirez v. Galaza,  
19 334 F.3d 850, 858-859 (9th Cir. 2003) (explaining that where a  
20 petitioner's claims, even if successful, would not shorten the  
21 duration of his custody, jurisdiction under 28 U.S.C. §2254 is  
22 absent), cert. denied, 541 U.S. 1063 (2004). A civil rights action  
23 pursuant to 42 U.S.C. § 1983, however "remains available for  
24 procedural challenges where success in the action would not  
25 necessarily spell immediate or speedier release for the prisoner."  
26 Wilkinson, 544 U.S. at 81 (emphasis in original).

27 Petitioner's allegations do not appear to relate to the  
28 constitutional validity of his conviction or sentence. Ground one

1 challenges petitioner's ability to administratively appeal a decision  
2 about the prison "work incentive" program. [Petition at 5-5A, Exhibit  
3 A & B]. Ground two challenges a general policy that purportedly  
4 disfavors releasing non-citizen inmates. [Petition at 5(2)<sup>1</sup>-5(2)B].  
5 Ground three challenges the denial of an advanced parole hearing. As  
6 pleaded, none of petitioner's allegations challenge a particular  
7 action or decision that directly affects the duration of petitioner's  
8 custody. Even petitioner's parole-related challenge does not attack  
9 the validity of the underlying decision denying him parole. Although  
10 petitioner's ultimate goal likely is a speedier release on parole, the  
11 only relief available on petitioner's claim regarding an advanced  
12 hearing date would be a shorter wait for his next parole hearing,  
13 giving him an earlier opportunity to attempt to convince the Board  
14 that he should be deemed suitable for parole. His claim, if  
15 successful, would not necessarily imply the invalidity of his  
16 confinement or shorten its duration. Arguably, then, such a claim is  
17 not properly raised in a federal habeas petition. Wilkinson, 544 at  
18 82 (claim seeking invalidation of state procedures used to deny parole  
19 suitability is cognizable under 42 U.S.C. § 1983).

20 Further, assuming that some of petitioner's allegations might  
21 present cognizable claims for relief, it is not clear that petitioner  
22 has exhausted his state remedies with respect to any of these claims.  
23 A state prisoner is required to exhaust all available state court  
24 remedies before a federal court may grant habeas relief. 28 U.S.C. §  
25 2254(b); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); see Duncan

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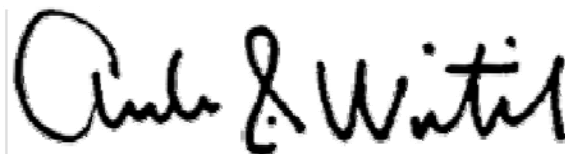
27 <sup>1</sup> The petition includes two versions of page 5. The Court refers to the  
28 sequentially second page 5 - on which petitioner has set forth "Ground  
two" - as 5(2).

1 v. Henry, 513 U.S. 364, 365 (1995)(per curiam). The exhaustion  
2 requirement is satisfied when the substance of a petitioner's federal  
3 claim has been fairly presented to the state's highest court. Davis  
4 v. Silva, 511 F.3d 1005, 1008-1009 (9th Cir. 2008). From the face of  
5 the petition, it does not appear that petitioner has presented any  
6 cognizable federal claim to the California Supreme Court.

7 Based upon the foregoing deficiencies, the petition is dismissed  
8 without prejudice and with leave to amend. Petitioner shall, within  
9 twenty-eight (28) days of the date of this order, file an amended  
10 petition curing the deficiencies noted above. The amended petition  
11 shall be filed on the forms provided by the Clerk and shall bear the  
12 case number CV 13-8015-DSF(AJW). Further, the amended petition shall  
13 include information regarding the conviction or decision petitioner  
14 intends to challenge, shall provide the specific legal and factual  
15 basis for his claims for relief, and shall indicate whether he has  
16 presented each claim to the California Supreme Court. Petitioner is  
17 cautioned that failure to file an amended petition within the time  
18 provided may result in dismissal of this petition without prejudice.

19 It is so ordered.

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21 Dated: November 6, 2013



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24 Andrew J. Wistrich  
United States Magistrate Judge  
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